

ARGENTINA

TRADE SUMMARY

In 2000, the U.S. trade surplus with Argentina was \$1.6 billion, a decrease of \$742 million from the U.S. trade surplus of \$2.3 billion in 1999. U.S. merchandise exports to Argentina were \$4.7 billion during 2000, a decrease of \$238 million (4.8 percent) from the level of U.S. exports to Argentina in 1999. Argentina was the United States' 26th largest export market in 2000. U.S. imports from Argentina were \$3.1 billion in 2000, an increase of \$504 million (19.4 percent) from the level of imports in 1999.

U.S. exports of private commercial services (i.e. excluding military and government) to Argentina were \$3.6 billion in 1999, and U.S. imports were \$922 million.

The stock of U.S. Foreign Direct Investment (FDI) in Argentina in 1999 was approximately \$14.2 billion, an increase of 10.5 percent from the level of U.S. FDI in 1998. U.S. FDI in Argentina is concentrated largely in the finance, manufacturing and banking sectors.

IMPORT POLICIES

During the 1990s, the government made significant progress in reducing tariffs and non-tariff barriers, including in the areas of investment and government procurement. Still, a number of serious barriers to trade remain. President Fernando de la Rúa, who took office in 1999, has pursued trade liberalization policies similar to those of the previous government.

TARIFFS AND DUTIES

MERCOSUR

On January 1, 1995, MERCOSUR designated itself as a customs union by establishing a common external tariff (CET) covering 85 percent of traded goods. MERCOSUR is gradually phasing in coverage of the CET through 2006, when all products should be covered by the customs union. (Under the CET, capital goods and information technology are excepted until 2001 and telecommunications equipment until 2006.) In 1999, most trade between Brazil and Argentina became duty-free under the intra-MERCOSUR duty phase out schedule. However, many sensitive sectors, such as sugar, autos and telecommunications equipment are included on either Brazil's or Argentina's exception list and are still subject to customs duties.

Prior to November 1997, MERCOSUR's CET ranged from zero to 20 percent. In November 1997, MERCOSUR's members agreed to temporarily raise the CET by three percentage points. Argentina implemented the increase in January 1998. The three-point increase is now being phased out by the end of 2002. Argentina's average applied tariff currently is approximately 13.5 percent. A limited number of imports are banned altogether, such as re-manufactured auto parts. Tariffs on toys were significantly

increased in January 1999, particularly those originating in countries that are not members of the World Trade Organization (WTO). The U.S. Government hopes to eliminate tariff barriers on a hemispheric basis through the Free Trade Area of the Americas (FTAA) negotiations.

Argentina's export sector was negatively affected by Brazil's devaluation of the Real in 1999, particularly in light of the fact that in recent years Brazil has accounted for nearly one-third of Argentine exports. In the wake of the devaluation, the Government of Argentina initiated a number of actions to slow or limit what it feared would be a flood of imports from Brazil, which in many cases led to negative Brazilian reactions and/or countermeasures. The two governments have reduced political friction through sectoral agreements on footwear, steel, paper and automobiles that generally restrained intra-MERCOSUR trade. Overall, the de la Rúa Administration has stated repeatedly that it will seek to strengthen and deepen the institution of MERCOSUR.

Customs Procedures

Argentina has implemented the WTO Agreement on Customs Valuation since 1995, but it continues to maintain a pre-shipment inspection (PSI) regime that U.S. exporters generally consider to be an unnecessary and arbitrary restraint on legitimate trade. Argentina's pre-shipment inspection (PSI) regime covers some 1,800 goods for shipments valued at more than \$800. U.S. exporters have complained about unwarranted delays in processing, costly procedures, and problems with customs officials that disregard pre-shipment valuations. In addition, Argentina has import monitoring mechanisms, similar to an import-licensing regime, which affect roughly one-fifth of its imports, principally textiles, toys and footwear. U.S. firms complain of cumbersome certificate of origin (COO) requirements, particularly in the electronics and textile sectors. The U.S. continues to urge Argentina to reform its customs regime and to improve the rules-based trade environment in Argentina.

Textiles, Apparel and Footwear

In 1996, USTR initiated an investigation under Section 301 of the Trade Act of 1974 into Argentina's application of specific duties on textiles, apparel and footwear; its 3 percent statistical tax on almost all imports; and its burdensome labeling requirements.

The United States and Argentina consulted extensively on labeling, leading to Argentina's modification of its labeling requirement. To address the remaining issues, the United States requested the establishment of a WTO dispute settlement panel in January 1997. In February 1997, the WTO dispute settlement body established a panel to examine Argentina's specific duties on textiles, apparel and footwear as well as Argentina's statistical tax on imports. Argentina subsequently informed the WTO that it had revoked the specific duties on footwear and replaced them with nearly identical provisional safeguard duties on non-MERCOSUR imports.

In November 1997, the panel found in favor of the United States, stating that under GATT Article II Argentina could not impose specific duties where it bound its tariffs exclusively in *ad valorem* terms. The panel also found that Argentina's 3 percent statistical tax on almost all imports violated GATT Article VIII. Argentina appealed the panel decision and the WTO Appellate Body upheld the panel determination in March 1998. To comply with its WTO obligations, in October 1998 Argentina capped its duties on textiles and apparel at the bound rate of 35 percent. With respect to the statistical tax, Argentina reduced the tax to 0.5 percent in January 1998, and subsequently imposed a further cap on the tax.

Footwear Safeguard

Subsequent to the 1997 WTO panel findings, Argentina replaced the specific duties on footwear with nearly-identical duties imposed as a safeguard measure. In September 1997, Argentina extended the application of the safeguard duties until February 2000. In November 1998, Argentina modified the footwear safeguard to establish a stringent quantitative restriction in addition to the high safeguard duties already imposed on footwear imports. Imports from MERCOSUR countries were excluded from the safeguard measures. Under the modified safeguard measure, footwear imports below the quota limit are subject to the original safeguard duty. Once the quota limit is filled, imports are assessed a duty rate that is double the normal safeguard duty.

The footwear safeguard raises serious questions regarding Argentina's WTO obligations and the United States has raised the issue bilaterally with the Government of Argentina. The United States reserved its right to participate as a third party in a panel established at the EU's request to examine Argentina's footwear safeguard. In addition, in March 1999 the United States requested the establishment of a panel to examine the consistency of Argentina's modified safeguard with the requirements of the WTO Agreement on Safeguards.

The WTO panel established to review the EU's complaint determined in June 1999 that Argentina's investigation of injury to its footwear industry did not satisfy the requirements of the Safeguards Agreement. The panel thus concluded that the investigation could not serve as a basis to impose either the original safeguard or the subsequent modification. The WTO Appellate Body affirmed that determination in December 1999. In response to the Appellate Body decision, the Government of Argentina modified the measure again, effective July 22, 2000. The Government of Argentina extended the period of application of the measure by three and one-half years, until July 27, 2003. The extended measure applies only to performance sports footwear. The safeguard measure with respect to other types of footwear has lapsed.

The U.S. Government has also expressed concern to Argentine authorities about licensing and labeling requirements suddenly imposed on footwear imports in August 1999. Administrative delays related to these measures effectively blocked footwear imports from some trading partners for several months. Brazilian footwear imports, which were exempted from the Argentine safeguard measure, were particularly hard hit. The Argentine Government began to process import licenses more expeditiously after an agreement was reached between the Brazilian and Argentine footwear sectors in

November 1999. The United States continues to monitor closely the evolution of Argentine trade measures in this sector.

STANDARDS, TESTING, LABELING AND CERTIFICATION

Agricultural Products

In 1995, Argentina placed a ban on imports of California fresh fruit due to the detection of oriental fruit flies in the state. While Argentina relaxed its ban on fruit from several California counties in 1996 and granted access in 1997 for citrus grown in these approved counties, Argentina continues to quarantine fruit from certain coastal counties no longer affected by the fly. In 1997, Argentina imposed a mandatory fumigation requirement on all stone fruits from the approved counties because of concern over the walnut husk fly, despite the lack of credible evidence that stone fruits are a ready host for this pest. The U.S. Department of Agriculture (USDA) continues to press Argentina to completely revoke these bans and to process expeditiously the cases of other U.S. fruits currently denied access to Argentina, such as citrus from Florida and Arizona, as well as Pacific Northwest cherries.

In 1998, Argentina announced its intention to allow U.S. pork and pork products into Argentina. However, the Argentine Department of Agriculture did not establish new regulations for boneless pork imports until October 2000, and regulations for importing "bone-in pork for further processing" were finally established in January 2001. While some restrictions remain in place, the new requirements represent significant progress. The U.S. pork industry believes that Argentina is a potential market for pork exports valued at approximately \$10 million.

Non-agricultural Products

IRAM, Argentina's standards institute, bases some of its voluntary standards on international standards. In addition, IRAM standards are in some cases compatible with U.S. or European standards. In general, Argentine buyers usually accept products that meet U.S. standards as well as U.S. product certifications and laboratory testing. In early 1998, however, Argentina began mandating compliance with new safety certifications on a wide range of products. Regulations that affect U.S. exports have now been issued for low voltage electrical products (household appliances, electronics products and electrical materials), toys, energy efficiency, covers for dangerous products, gas products, construction steel, personal protective equipment and elevators. The procedures for compliance often appear inconsistent, redundant and non-transparent. Regulations that require product re-testing are particularly cumbersome and costly and are especially problematic for small and medium-sized U.S. companies. In some cases, Argentina has failed to fulfill the notification and comment requirements of the WTO Agreement on Technical Barriers to Trade (TBT) in its implementation of these measures. The United States has raised this issue with the Argentine Government in Geneva and bilaterally.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Patents

Argentina's lack of adequate and effective patent protection has been a long-standing irritant in our bilateral trade relationship. Argentina is on the Special 301 Priority Watch List. Many of the TRIPS inconsistencies in the Argentine patent law were not previously actionable in the WTO, because Argentina availed itself of the developing country transition period. However, most of Argentina's TRIPS obligations came into force on January 1, 2000. As a result, the U.S. Government is currently in consultations with Argentina under the WTO dispute resolution process in order to address shortcomings in Argentina's intellectual property regime.

In March 1996, Executive Decree 260, which consolidated Argentine patent law, authorized the National Intellectual Property Institute (INPI) to approve pharmaceutical patents starting in October 2000, but contained numerous problematic provisions. In December 1996, the Argentine Congress passed legislation that permits Argentine companies to use data submitted by innovative companies to obtain marketing approval in Argentina. As a result of the law, in August 1998 the Government of Argentina eliminated protection that it had previously accorded data used in the registration of agrochemical products. During 1999, this backsliding resulted in the U.S. Government requesting WTO dispute settlement consultations with Argentina, which was announced by USTR in the context of the 1999 Special 301 Review. In 2000, several other shortcomings in the patent regime were added to the U.S.-Argentina WTO consultations. These shortcomings include Argentina's failure to protect confidential test data submitted to government regulatory authorities for pharmaceuticals and agricultural chemicals; its denial of certain exclusive rights for patents; its failure to provide such provisional measures as preliminary injunctions to prevent infringements of patent rights; and its exclusion of certain subject matter from patentability.

INPI's board has changed several times over the last several years, but appears to have stabilized. The organization is chronically short of funds, which has impaired its efforts to modernize and improve service. The U.S. industry estimates that Argentina's lack of adequate pharmaceutical patent protection results in losses of over \$600 million a year.

Copyrights

Argentina's copyright laws provide generally good protection, and are under review by the Government of Argentina to ensure that these laws fully meet TRIPS requirements. Argentina adopted legislation in 1999 to ratify the World Intellectual Property Organization (WIPO) Copyright Treaty and the WIPO Performances and Phonograms Treaty. To better protect software, the Argentine Government promulgated legislation in November 1998 establishing software piracy as a criminal offense, thus avoiding problems generated by previous court rulings. Despite vigorous efforts by the software industry, the Government of Argentina has yet to fully legalize software used in all government offices.

Enforcement of copyrights on recorded music, videos, books and computer software remains spotty. Although Argentine Customs and other Government authorities generally cooperate with industry efforts to stop shipments of pirated merchandise, inadequate resources and slow court procedures have hampered the effectiveness of enforcement efforts. Inadequate border controls, particularly at the

Paraguayan/Brazilian frontier, contribute to the regional circulation of pirated goods. The U.S. copyright industry estimates annual losses due to copyright infringement at over \$275 million.

Trademarks

U.S. companies report that the process of registering trademarks generally takes over five months. Once a trademark is registered, however, enforcement is relatively efficient and reliable.

SERVICES BARRIERS

Although Argentina enacted liberalization in the service sector as part of its broader economic reform program in the 1990s, some barriers continue to exist. For example, the Argentine Government obliges cable/pay television operators to register their programming with a government body. In addition, restrictions regarding the showing, printing and dubbing of films have burdened U.S. exports, as has the practice of charging *ad valorem* customs duties based on the value of "authors' rights," rather than solely on the value of the physical materials being imported, which is the WTO standard.

Argentina reportedly levies an excise tax on reinsurance premiums obtained abroad. The tax is defined as a percentage of the gross reinsurance premium. This results in an excise tax withheld at 3.5 percent of gross premiums.

In the WTO, Argentina has committed to allow foreign suppliers of non-insurance financial services to establish all forms of commercial presence and has committed to provide substantially full market access and national treatment to foreign suppliers of non-insurance financial services. The only significant remaining issue is lending limits for foreign bank branches that are based on local paid-in "capital," not parent bank capital. This effectively removes the rationale for establishing in branch form.

In the WTO negotiations on telecommunications services, Argentina made commitments on most basic telecommunications services and adopted the reference paper on regulatory commitments. Argentina ratified the Fourth Protocol to the General Agreement on Trade in Services (GATS) in July 1998. Argentina opened long distance services to increased competition in November 1999, and allowed full market access for local, domestic and international long distance, cellular and other wireless and international data services in November 2000.

INVESTMENT BARRIERS

In line with WTO rules, Argentina notified measures inconsistent with its obligations under the WTO Agreement on Trade-Related Investment Measures (TRIMS). These measures deal with local content and trade balancing in the automotive industry. Proper notification allowed developing-country WTO members to maintain such measures for a five-year transitional period, ending January 1, 2000. Regardless, Argentina and its MERCOSUR partners were unable to agree on a common auto regime by that date. Argentina and Brazil signed a 60-day interim agreement in December 1999 to allow the

talks to continue. Meanwhile, Argentina submitted a request to the WTO for a lengthy, seven-year extension to its transition period. The United States is working with other WTO Members to conduct a case-by-case review of all TRIMS extension requests, with an effort to ensure that the individual needs of those countries that have made requests can be addressed. This process does not limit a Member's rights under the WTO Agreement.

ELECTRONIC COMMERCE

Argentina has made a broad range of value-added and basic telecommunications GATS commitments that have helped support the development of electronic commerce. The Argentines have taken steps to lower the cost of Internet usage and have shown interest in the U.S. electronic commerce initiatives in the FTAA and WTO. The United States and Argentina have signed a bilateral initiative to promote the growth of electronic commerce. Despite supporting electronic commerce, the Government of Argentina has not signed onto the WTO Information Technology Agreement (ITA). In addition, Argentina does not allow the use of electronically produced air waybills, slowing the customs processing of critical "just-in-time" shipments and interfering with Argentina's ability to conduct electronic commerce transactions. Legislation on Internet privacy, Habeas Data, contains an article addressing trans-border data flows that prohibits the transfer of personal data to countries that do not provide an "adequate" level of privacy protection.